

January 13, 2014

Via Electronic Mail

The Honorable Dr. Ernest Moniz
Secretary
U.S. Department of Energy

**Re: Energy Conservation Program: Energy Conservation Standards for
Walk-In Coolers and Freezers; Docket No. EERE-2008-BT-STD-0015**

Dear Secretary Moniz:

The U.S. Small Business Administration Office of Advocacy (Advocacy) respectfully submits the following comments to the Department of Energy (DOE) regarding its proposed energy efficiency standards for walk-in coolers and freezers.¹ Advocacy has heard persistent concerns from small manufacturers of walk-in panels regarding the costs of the proposed standard. Advocacy believes the proposed rule would impose a significantly disproportionate burden on small businesses within the walk-in industry. To mitigate that impact to small entities while also achieving significant energy savings, Advocacy recommends that DOE adopt an alternative standard.

About the Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the Federal rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, Federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

¹ 78 *Fed. Reg.* 55782 (September 11, 2013).

Background

DOE has proposed energy efficiency standards for walk-in coolers and freezers using a component-based approach. The three primary components for which DOE is setting energy efficiency standards are refrigeration systems, panels and doors. At the proposed trial standard level (TSL4), DOE expects to achieve the bulk of its energy savings through the energy efficiency standard for refrigeration systems.² DOE has identified and compared alternative TSLs, including TSL2, which sets the same standard for refrigeration systems, but a less burdensome standard for walk-in panels.³

Advocacy has heard from small businesses engaged in the manufacture of walk-in panels and doors regarding their significant concerns with the proposed TSL. Unlike the refrigeration system industry, the panel manufacturing industry can be characterized as a small business industry. In its own analysis, DOE estimates that approximately 80 percent of the panel industry is comprised of small businesses.⁴ These small businesses also represent the bulk of the market share for walk-in panels, as well as walk-in doors. Because of this, Advocacy is very concerned about the impact the proposed TSL will have on this small business industry.

The proposed TSL will have a disproportionately large impact on small manufacturers

Small businesses have discussed the trend toward consolidation in the panel manufacturing industry with Advocacy, and have indicated that the proposed standard will cause even further consolidation because of the disproportionate burden the proposed standard will have on small manufacturers. DOE estimates that the proposed TSL will impose capital conversion costs at 565 percent of annual capital expenditures for small panel manufacturers, increasing costs by 6 times original expenditures—those costs would represent nine percent of revenues and 242 percent of annual operating income for the average small panel manufacturer.⁵ In contrast, DOE estimates that large manufacturers will incur capital conversion costs at 22 percent of annual capital expenditures—these costs represent less than one percent of revenues and ten percent of operating income for large manufacturers.⁶

DOE also estimates that it expects to conserve only 0.2 kilowatts per hour, per square foot of panel, per year, by adopting TSL4 instead of TSL2. These savings represent a very small fraction of the overall energy savings expected to be achieved through the energy efficiency standards for all of the other components combined.⁷ Additionally, these savings represent very

² This becomes apparent after comparing the energy savings achieved at TSL2 vs. TSL4 which hold the energy efficiency standard for refrigeration systems constant, while varying the energy efficiency standard for panels.

³ It is unclear from DOE's technical support document whether TSL2 and TSL4 incorporate the same standard for walk-in doors; however, the data that is available indicate that the energy saving expected to be achieved through more efficient doors are also minimal compared to the savings expected to be achieved through the refrigeration system standard.

⁴ *Supra* note 1 at 55876 (indicating that 42 out of 52 small panel manufacturers identified by DOE are small businesses).

⁵ *Supra* note 1 at 55877, TABLE VI-1—IMPACTS OF CONVERSION COSTS ON A SMALL PANEL MANUFACTURER and TABLE VI-2—IMPACTS OF CONVERSION COSTS ON A LARGE PANEL MANUFACTURER.

⁶ *Id.*

⁷ *Supra* note 2.

low cost-savings to consumers over the 15 year lifetime of the product contemplated in the rule (i.e. eight dollars per 100 square feet for medium sized panels, and 72 dollars per 100 square feet for large panels).⁸

DOE should adopt alternative measures to reduce the burden on small businesses

Advocacy believes the burden that DOE plans to impose on small panel manufacturers for such marginal energy savings will impose irreparable harm on a small business niche industry. The Energy Policy Conservation Act (EPCA) requires DOE to adopt efficiency standards that achieve significant energy savings to the extent they are economically justified. While DOE concludes that the proposed standards are economically justified when costs are aggregated and compared with energy savings across all three component industries, it is clear that the economic impacts of the proposed standard are extremely lopsided. Advocacy notes that if DOE had proposed the standard for panels only, the standard would not be economically justified, per EPCAs definition of the term.⁹

Advocacy encourages DOE to adopt a TSL that achieves significant energy savings while mitigating such disproportionate costs for small businesses; small panel manufacturers have suggested to Advocacy that DOE should adopt TSL2 to accomplish that aim. In the alternative, Advocacy recommends that DOE initiate a separate rulemaking evaluating various energy efficiency standards for walk-in envelope components (including panels and doors), so that the question of whether the standards are economically justified can be analyzed in a more appropriate context.

Finally, Advocacy has also heard concerns from small panel manufacturers that, regardless of the TSL adopted by DOE in a final energy efficiency standard, testing for their products is not yet widely available and they are concerned that they will not be able to comply with the standard by the proposed effective date. Advocacy recommends that DOE provide panel manufacturers with an additional two years to comply with the proposed efficiency standards, as EPCA allows. Extending the compliance date will provide additional time for small manufacturers to test their products and allow manufacturers to spread capital conversion costs out over a larger period of time.

Conclusion

In conclusion, Advocacy believes that DOE should not adopt the proposed TSL. The proposed standards for walk-in panels are not cost-justified by energy savings when examined independently. Advocacy recommends that DOE either adopt TSL2, or remove panels from the

⁸ *Supra* note 1 at 55785, TABLE I-2—SHIPMENT-WEIGHTED AVERAGE IMPACTS OF PROPOSED STANDARDS (TSL 4) ON CONSUMERS OF WALK-IN COOLERS AND WALK-IN FREEZERS.

⁹ EPCA provides for a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of equipment that meets the standard level is less than three times the value of the first-year energy savings resulting from the standard, as calculated under the applicable DOE test procedure, *see* 42 U.S.C. 6295(o)(2)(B)(iii); *See also supra* note 1 at 55785, TABLE I-2—SHIPMENT-WEIGHTED AVERAGE IMPACTS OF PROPOSED STANDARDS (TSL 4) ON CONSUMERS OF WALK-IN COOLERS AND WALK-IN FREEZERS (*indicating that the payback period to consumers of walk-in panels under the proposed standards is greater than three years in every case*).

rule entirely and propose a separate standard for walk-in panels that is cost-justified under EPCA. Additionally, DOE should extend the compliance date for an additional two years. Should you have any questions, please contact me or my staff at 202/205-6533.

Sincerely,

A handwritten signature in black ink, reading "Winslow L. Sargeant".

Winslow L. Sargeant, Ph.D.
Chief Counsel

A handwritten signature in blue ink, reading "Jamie Belcore Saloom".

Jamie Belcore Saloom
Assistant Chief Counsel

cc: The Honorable Dr. Howard Shelanski
Administrator, Office of Information and Regulatory Affairs